

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 749

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

James Roger Madalena

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE URANIUM LEGACY  
CLEANUP ACT; PROVIDING FOR THE ADMINISTRATION OF THAT ACT AND  
CLEANUP ACTIONS TO BE TAKEN PURSUANT TO IT; AUTHORIZING  
SEVERANCE TAX BONDS TO FUND URANIUM LEGACY CLEANUP ACTIVITIES;  
IMPOSING STRICT LIABILITY ON URANIUM MINING ACTIVITIES; MAKING  
APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 6 of this act may be cited as the "Uranium Legacy  
Cleanup Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Uranium Legacy Cleanup Act:

A. "department" means the energy, minerals and  
natural resources department;

.176932.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1           B. "financial assistance" means providing grants or  
2 loans on terms and conditions approved by the secretary for  
3 qualified projects;

4           C. "fund" means the uranium legacy cleanup fund;

5           D. "qualified project" means a project selected by  
6 the secretary for financial assistance; and

7           E. "secretary" means the secretary of energy,  
8 minerals and natural resources.

9           Section 3. [NEW MATERIAL] URANIUM LEGACY CLEANUP FUND--  
10 CREATED--PURPOSE--APPROPRIATIONS.--

11           A. The "uranium legacy cleanup fund" is created as  
12 a nonreverting fund in the state treasury and shall be  
13 administered by the department. The fund shall consist of the  
14 proceeds from severance tax bonds issued pursuant to Section  
15 7-27-10.2 NMSA 1978; money that is repaid from loans approved  
16 by the secretary; and money that is appropriated or donated or  
17 that otherwise accrues to the fund. Money in the fund shall be  
18 invested by the state investment officer in the manner that  
19 land grant permanent funds are invested pursuant to Chapter 6,  
20 Article 8 NMSA 1978. Income from investment of the fund shall  
21 be credited to the fund.

22           B. The department shall establish procedures and  
23 adopt rules as required to administer the fund and to originate  
24 grants or loans for qualified projects approved by the  
25 secretary.

.176932.1

underscored material = new  
[bracketed material] = delete

1           C. Money in the fund shall be appropriated by the  
2 legislature to the department to carry out the purposes of the  
3 Uranium Legacy Cleanup Act by providing financial assistance  
4 for qualified projects. Money shall be disbursed from the fund  
5 only on warrant of the secretary of finance and administration  
6 upon vouchers signed by the secretary of energy, minerals and  
7 natural resources or the secretary's authorized representative.  
8 Any unexpended or unencumbered balance remaining at the end of  
9 a fiscal year shall not revert to the general fund.

10           Section 4. [NEW MATERIAL] DUTIES OF THE SECRETARY.--

11           A. Expenditures from the fund for financial  
12 assistance shall be approved by the secretary for qualified  
13 projects directed at the elimination or reduction of actual or  
14 potential exposure of persons to contamination that may have  
15 resulted from uranium mining or milling activities that  
16 occurred prior to July 1, 2009.

17           B. The secretary shall adopt rules for applying for  
18 financial assistance from the fund and for establishing  
19 priorities for qualified projects. The priorities for  
20 approving qualified projects shall be based upon:

21                       (1) the protection of public health, safety  
22 and welfare;

23                       (2) the protection of the environment from  
24 existing or potential contamination;

25                       (3) the ability to leverage funds available

.176932.1

underscored material = new  
[bracketed material] = delete

1 from other sources to implement qualified projects;

2 (4) the degree to which a qualified project  
3 can be completed with the requested funding;

4 (5) the size of the area to be included with  
5 the qualified project;

6 (6) the number of persons affected or  
7 potentially affected by contamination at the site of the  
8 qualified project;

9 (7) the level of actual or potential radiation  
10 exposure at the site of the qualified project;

11 (8) the potential for an increase of the area  
12 contaminated or potential exposure to persons if the site of a  
13 qualified project is not cleaned up;

14 (9) the lack of any potentially responsible  
15 party obligated to conduct a cleanup pursuant to any federal,  
16 state or tribal law;

17 (10) the potential uses for the site following  
18 the completion of the qualified project; and

19 (11) the legal authority of the applicant to  
20 conduct cleanup activities on the proposed site.

21 C. Financial assistance may be provided to  
22 qualified projects in which the state of New Mexico, other  
23 state governments, the federal government, tribal governments  
24 and other public and private entities are participating.

25 .176932.1

underscored material = new  
[bracketed material] = delete

1           D. Financial assistance may be provided to  
2 qualified projects only if a project is located on real  
3 property in New Mexico owned by the federal government, the  
4 state or an Indian nation, tribe or pueblo.

5           Section 5. [NEW MATERIAL] REPORT TO LEGISLATURE.--The  
6 secretary shall report to the appropriate interim legislative  
7 committee no later than October 1 of each year regarding the  
8 total expenditures from the fund for the previous fiscal year,  
9 the purposes for which expenditures were made, an analysis of  
10 the progress of the projects funded and proposals for  
11 legislative action in the subsequent legislative session.

12           Section 6. [NEW MATERIAL] URANIUM MINING OPERATIONS--  
13 STRICT LIABILITY--DEFENSES--INDEMNIFICATION.--

14           A. As used in this section:

15                   (1) "contaminant" means any substance from a  
16 uranium mining operation that could alter, if discharged or  
17 spilled, the physical, chemical, biological or radiological  
18 qualities of any part of the environment, including water.

19           "Contaminant" does not mean source, special nuclear or  
20 by-product material as those terms are defined in the federal  
21 Atomic Energy Act of 1954;

22                   (2) "costs" means all costs of removal or  
23 remedial action, including oversight costs, indirect costs,  
24 legal costs and interest, incurred by the state of New Mexico  
25 because of a release or threatened release resulting in the

1 incurring of those costs;

2 (3) "director" means the director of the  
3 mining and minerals division of the energy, minerals and  
4 natural resources department;

5 (4) "release" means the introduction or  
6 allowance of the introduction into the environment, including  
7 into water, either directly or indirectly, of one or more  
8 contaminants in a quantity and duration that may, with  
9 reasonable probability, injure human health, animal or plant  
10 life or property or unreasonably interfere with the public  
11 welfare or use of the property for a purpose other than a  
12 uranium mining operation;

13 (5) "responsible party" means any person upon  
14 whom liability is imposed pursuant to Subsection B of this  
15 section;

16 (6) "secretary" means the secretary of  
17 environment; and

18 (7) "uranium mining operation" means a  
19 facility or a location where mining, milling or exploration  
20 activities were conducted during or after 1900 for the purpose  
21 of extracting, processing or exploring for radium, thorium or  
22 uranium ore.

23 B. The following persons shall be strictly liable  
24 for costs:

25 (1) the owner of a uranium mining operation;

underscoring material = new  
[bracketed material] = delete

1 (2) the operator of a uranium mining  
2 operation;

3 (3) any person having a permit issued pursuant  
4 to the New Mexico Mining Act or Water Quality Act that covers a  
5 uranium mining operation;

6 (4) any person who, at the time of  
7 construction or operation of a uranium mining operation, or  
8 thereafter, owned, operated or had a permit to operate a  
9 uranium mining operation;

10 (5) subject to Paragraph (2) of Subsection C  
11 of this section, any person who owned the real property upon  
12 which a uranium mining operation was conducted at the time of,  
13 or after the conduct of, a uranium mining operation;

14 (6) a successor-in-interest to the uranium  
15 mining operation or the real property upon which it is or was  
16 situate; and

17 (7) a successor-in-interest to any of the  
18 persons identified in Paragraphs (1) through (6) of this  
19 subsection, whether as a result of merger, assets purchase,  
20 stock transfer or any other transfer whatsoever or any series  
21 or combination of such transactions. In order for a  
22 successor-in-interest to be liable pursuant to this section, it  
23 is not necessary that it own, operate or be permitted to  
24 operate a uranium mining operation or the real property upon  
25 which the operation is or was situate.

.176932.1

underscored material = new  
[bracketed material] = delete

1 C. A person otherwise liable pursuant to Subsection  
2 B of this section shall not be liable if that person can  
3 establish by a preponderance of the evidence that:

4 (1) the release of contaminants and the  
5 damages resulting therefrom were caused solely by an act of  
6 God; or

7 (2) that person is an owner who:

8 (a) at the time that person acquired the  
9 property, after making reasonable inquiry, did not know and had  
10 no reason to know that the property had been used for a uranium  
11 mining operation;

12 (b) is a governmental entity that  
13 acquired the property by escheat, or through any other  
14 involuntary transfer or acquisition, or through the exercise of  
15 eminent domain authority;

16 (c) acquired the property by inheritance  
17 or devise;

18 (d) is a surface estate owner who did  
19 not participate in the management of the uranium mining  
20 operation; or

21 (e) did not participate in the  
22 management of the uranium mining operation and: 1) whose only  
23 interest in the uranium mining operation is as a royalty  
24 interest holder by virtue of ownership and a duly executed  
25 lease; 2) holds indicia of ownership primarily to protect a

.176932.1

underscored material = new  
[bracketed material] = delete

1 security interest in the facility; or 3) foreclosed such a  
2 security interest after the occurrence of the release.

3 D. Whenever, on the basis of any information, the  
4 director determines that there has been any release or the  
5 secretary determines that there has been a release from a  
6 uranium mining operation that has the potential to affect  
7 water, public health or the environment, the director or the  
8 secretary may:

9 (1) issue an order to any responsible party  
10 requiring removal or remedial action, including removal or  
11 remedial action beyond a uranium mining operation's boundaries,  
12 or such other response measure as the director or the secretary  
13 deems necessary to protect human health or the environment; or

14 (2) commence an action in district court for  
15 appropriate relief, including a temporary or permanent  
16 injunction.

17 E. If any responsible party liable for a release or  
18 threatened release fails without sufficient cause to undertake  
19 removal or remedial action properly upon order of the director  
20 or the secretary, that person shall be liable to the state for  
21 punitive damages in an amount at least equal to but not more  
22 than three times the amount of costs incurred as a result of  
23 that person's failure to take proper action. The director or  
24 the secretary is authorized to commence a civil action against  
25 any person that fails without sufficient cause to undertake

.176932.1

underscored material = new  
[bracketed material] = delete

1 removal or remedial action properly to recover punitive  
2 damages, which damages shall be in addition to any costs  
3 imposed against that person.

4 F. The court, in accordance with joint and several  
5 liability, may award costs or damages, or both. Any amount  
6 received by the state in costs or damages pursuant to this  
7 section is appropriated to the uranium legacy cleanup fund.

8 G. No state agency shall be liable pursuant to this  
9 section for costs or damages as a result of actions taken in  
10 response to an emergency created by the release or threatened  
11 release by or from a uranium mining operation.

12 H. No indemnification or similar agreement shall be  
13 effective to transfer, from a responsible party pursuant to  
14 this section to any other person, the liability imposed  
15 pursuant to this section. Nothing in this subsection bars any  
16 agreement to insure, hold harmless or indemnify a party to that  
17 agreement for any liability pursuant to this section.

18 I. Nothing in this section bars or replaces any  
19 cause of action available to any person that existed before the  
20 enactment of this section. The causes of action established  
21 pursuant to this section are in addition to other causes of  
22 action.

23 Section 7. A new section of the Severance Tax Bonding  
24 Act, Section 7-27-10.2 NMSA 1978, is enacted to read:

25 "7-27-10.2. [NEW MATERIAL] BONDING CAPACITY--

.176932.1

underscored material = new  
[bracketed material] = delete

1 AUTHORIZATION FOR SEVERANCE TAX BONDS--URANIUM LEGACY CLEANUP  
2 PROJECTS.--

3 A. After the board of finance division of the  
4 department of finance and administration estimates the amount  
5 of bonding capacity available for severance tax bonds to be  
6 authorized by the legislature pursuant to Section 7-27-10.1  
7 NMSA 1978, the division shall reserve ten percent of the  
8 estimated bonding capacity each year. The legislature  
9 authorizes the state board of finance to issue severance tax  
10 bonds in the annually reserved amount for use by the energy,  
11 minerals and natural resources department to fund uranium  
12 legacy cleanup projects.

13 B. The energy, minerals and natural resources  
14 department shall certify to the state board of finance the need  
15 for issuance of bonds for uranium legacy cleanup projects. The  
16 state board of finance may issue and sell the bonds in the same  
17 manner as other severance tax bonds in an amount not to exceed  
18 the authorized amount provided for in Subsection A of this  
19 section. If necessary, the state board of finance shall take  
20 the appropriate steps to comply with the federal Internal  
21 Revenue Code of 1986, as amended. Proceeds from the sale of  
22 the bonds are appropriated to the uranium legacy cleanup fund  
23 for the purposes certified by the secretary of energy, minerals  
24 and natural resources to the state board of finance.

25 C. Money from the severance tax bonds provided for  
.176932.1

underscored material = new  
[bracketed material] = delete

1 in this section shall not be used to pay indirect project  
2 costs. Any unexpended balance from proceeds of severance tax  
3 bonds issued for a uranium legacy cleanup project shall revert  
4 to the severance tax bonding fund within six months of  
5 completion of the uranium legacy cleanup project. The energy,  
6 minerals and natural resources department shall monitor and  
7 ensure proper reversions.

8 D. As used in this section, "uranium legacy cleanup  
9 project" means a capital outlay project for qualified projects  
10 pursuant to the Uranium Legacy Cleanup Act."

11 Section 8. SEVERABILITY.--If any part or application of  
12 the Uranium Legacy Cleanup Act is held invalid, the remainder  
13 or its application to other situations or persons shall not be  
14 affected.

15 Section 9. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is January 1, 2010.